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CURRENT TOPICS

Speedy Trial in Chancery

PRACTITIONERS concerned with Chancery actions will welcome the decision made in *Seth-Smith* v. *Trustee in Bankruptcy for Davies and Another*, p. 677, *post*. In that case a landlord had brought an action for forfeiture of a lease on the ground of a breach of covenant to repair. The trustee in bankruptcy for one of the defendants submitted to judgment but counter-claimed for relief against forfeiture. The Master refused the counter-claim. The trustee then applied to a Chancery judge on a motion for stay of execution on the landlord's claim. On that motion the landlord asked for directions for the trial of the counter-claim under R.S.C., Ord. 14, r. 8, and submitted that the matter of the counter-claim was proper to be set down for trial in a special list of actions during the long vacation under the provisions of R.S.C., Ord. 63, r. 4, which, however, referred only to causes or matters in the Queen's Bench Division. Nevertheless it was submitted that the procedure under Ord. 14 applied to all divisions of the High Court and that therefore an action in the Chancery Division could be the subject of trial in the long vacation. DANCKWERTS, J., on an undertaking by the parties to take all the necessary steps to have the action on the counter-claim brought on, ruled that the matter was proper for trial in the vacation court. The vacation judge, PHILLIMORE, J., allowed the application of counsel for the trustee in bankruptcy to fix 19th August for the trial of the counter-claim, which was the only outstanding substantial issue. In giving his ruling, Phillimore, J., said that the action would be set down in a special list for the vacation court dealing with matters in the Chancery Division on 19th August and would be heard after other vacation matters in that court had been disposed of.

Vehicle Testing

ALTHOUGH the days of the unroadworthy mechanically-propelled crocks are numbered, these vehicles still have some time left to them. The Road Traffic Act, 1956 (Commencement No. 8) Order (S.I. 1959 No. 1357) brings into force on 15th September s. 1 of the Road Traffic Act, 1956. This empowers the Minister of Transport and Civil Aviation to make the necessary regulations under which official testing stations can be set up. The regulations will also deal with the scope of the test and the way in which the examinations are to be made. Draft copies of the Motor Vehicles (Tests) Regulations were sent by the Ministry to interested organisations in July accompanied by an invitation to send any comments on the regulations to the Ministry by 4th September. After the regulations are made motorists will be able to take their cars to officially-appointed stations for a *voluntary* test of brakes, steering and lights. Later on the Minister will make further orders bringing s. 2 of the Act into operation. The

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operation of this section, dealing with obligatory test certificates, will indeed be the amber, if not the red, light signal for vehicles whose mechanical condition makes them a danger to all road-users. But until these orders and further regulations are made, no person will be required to have an obligatory test certificate before taking on the road a vehicle first registered more than ten years ago. For the sake of road safety, the sooner s. 2 of the Act becomes operative the better.

Excessive Noise

THE Motor Vehicles (Construction and Use) Regulations, 1955, provide that no motor vehicle shall be used on a road in such manner as to cause any excessive noise which could have been avoided if the driver had used reasonable care (reg. 82) and, more particularly, that no person shall use or cause or permit to be used on a road any vehicle propelled by an internal combustion engine which is not fitted with a silencer, expansion chamber or other contrivance suitable and sufficient for reducing as far as may be reasonable the noise caused by the escape of the exhaust gases from the engine (regs. 20 and 77 (1)). While the vehicle is used on a road, every such silencer, expansion chamber or other contrivance must be maintained in good and efficient working order and shall not have been altered in such a way that the noise caused by the escape of the exhaust gases is made greater by the alteration (reg. 77 (2)). It is an offence to use a motor vehicle which does not comply with these regulations (Road Traffic Act, 1930, s. 3). Mr. W. A. MCCONNACH, the Chief Constable of Southend, has issued special orders that action must be taken against owners of noisy motor-cycles and cars and a number of alleged offenders may be summoned for having inefficient silencers. Only those motorists and motor-cyclists who delight in having an exhaust which makes what they believe to be an impressive noise will fail to support him in his campaign. A letter published in the *Daily Telegraph* (22nd July) throws some light on the American attitude to this problem. When he was in Southern California last year the writer, Mr. F. J. BEAZLEY, asked a leading citizen why they had no noisy motor-cycles. He was told : " If we can hear 'em or smell 'em at fifty yards we fine 'em twenty dollars." The difficulty in England is that we have no such straightforward test for deciding whether a vehicle satisfies the regulations as to noise.

Importuning by Men

SECTION 32 of the Sexual Offences Act, 1956, provides : " It is an offence for a man persistently to solicit or importune in a public place for immoral purposes." There would seem to be some divergence of opinion as to whether this statutory provision makes it an offence for a man to solicit a woman in the street. In a recent case at the West London Magistrates' Court a man was charged with importuning for an immoral purpose. It was said that he approached convicted prostitutes and asked one : " Are you doing business ? " and another : " How much do you charge ? " Because of the unwelcome publicity that the case had received the magistrate, Mr. E. R. GUEST, made an order for the absolute discharge of the accused. In recent months there have been several instances of convictions in similar circumstances, particularly in the North of England (see, e.g., *Daily Telegraph*, 26th March, 1959), and the Committee on Homosexual Offences and Prostitution (Cmnd. 247 of 1957) found that : " The statute does not specify the sex of the persons solicited, and in addition to its application to the solicitation of males by males for the purposes of homosexual acts . . . it would seem to apply also to . . . the solicitation of females by males for immoral purposes." It is clear from the debates on the Street Offences Bill (now the Street Offences Act, 1959) that the Government share this view, but a High Court decision on the point would be welcome. Of course, if s. 32 of the 1956 Act is to be given this interpretation and is not confined to the soliciting of males by males for purposes of homosexual acts and the soliciting of males by males for the purpose of immoral relations with females, difficulties may arise in deciding what are " immoral purposes ". There is little judicial authority as to the meaning of this expression but in *Upfill* v. *Wright* [1911] 1 K.B. 506 Darling, J., declared that " fornication is immoral, and immoral in the sense that courts of law will take cognisance of the fact that it is immoral ".

Further Reflections on Flick Knives

THE Restriction of Offensive Weapons Act, 1959 (previously noted at p. 438, *ante*) prohibits the manufacture, sale, hire, offer for sale or hire, lending or giving of flick knives (including gravity knives and flick guns). Possession of such a knife is not in itself made an offence but any person who, without lawful authority or reasonable excuse, has with him in any highway or in any place or premises to which the public are admitted any offensive weapon is guilty of an offence under the Prevention of Crime Act, 1953. What is meant by " giving " or " lending " remains to be argued; if a person lets another handle his flick knife, it is doubtful if he either " gives " or " lends " it to that other so long as the owner is present and retains control of the weapon. Purchase of a flick knife is not specifically made an offence but the buyer seemingly would be guilty of aiding and abetting the seller and so be liable to the same penalties. Use of a flick knife by its owner in a place which is not a public place appears to be no offence under either the new Act or that of 1953. If a man chases his wife's lover round the inside of his house and garden or a private the sergeant-major round the barrack-square with a flick knife, neither commits an offence so far as the two Acts under consideration are concerned, but if the man chases the paramour into the street, then the 1953 Act starts to apply. The 1959 Act likewise would apply if a private gave his flick knife to the sergeant-major with precise instructions as to its disposal. An unusual feature of the new Act is that the importation of a flick knife is prohibited by s. 1 (2) but no penalty is laid down for breach of this provision. The Customs and Excise Act, 1952, ss. 44 and 45, however, provide for the punishment of offenders who bring in goods prohibited by any enactment with intent to evade the prohibition and for the forfeiture of such goods. Moreover, disobedience to a statute may in itself be a misdemeanour at common law (see Archbold, 34th ed., para. 6). Another unusual feature of the new Act is that all offences under it are expressed to be triable by magistrates only but while the penalty on first conviction is three months' imprisonment or a fine or both, that on second conviction is six months' imprisonment or a fine or both. A second offender may therefore claim to be tried by jury pursuant to the Magistrates' Courts Act, 1952, s. 25, and the clerk to the justices must therefore explain to every person charged under the Act that he may have the right to claim trial by jury and then ask him whether, if he has that right, he wishes to be tried by a jury. If he does claim to be tried on indictment, the court must then inquire into his record to see if he has the necessary " qualifying " previous conviction, in the manner required by s. 23 of the Magistrates' Courts Rules, 1952.

ESTATE DUTY: EXCLUSION OF DONOR FROM POSSESSION OR BENEFIT

WHEN moving the Third Reading of the Finance Bill, 1959 (see House of Commons Parliamentary Debates, 10th July, 1959, cols. 1770, 1771), the Chancellor of the Exchequer said that cl. 35 of the Bill (now s. 35 of the Act) " reinstates an estate duty practice in relation to certain out-and-out gifts *inter vivos*, duty on which, in general, is payable on the death of the donor only if the gift is made within five years of death. It was the practice of the Estate Duty Office (he said) to regard a gift of property as an out-and-out gift even if the donor occupied the property subsequently under a lease from the donee, provided that the full economic rent was charged. That practice was upset by a recent decision of the Privy Council in . . . [*Chick* v. *Commissioner of Stamp Duties* (*N.S.W.*) [1958] A.C. 435], and its restoration by the clause was generally welcomed by the House."

The welcome accorded the new enactment is not confined to members of the House, even though it is tempered with some disappointment, since subs. (3) confers an advantage on the Revenue in that a benefit obtained by the donor by virtue of any associated operations (as defined by s. 59 of the Finance Act, 1940) of which the gift is one is to be treated as a benefit to the donor by contract or otherwise. On the other hand, it is clear that the new section (as stated at p. 478, *ante*) goes beyond a mere reversal of the decision of the Privy Council in *Chick's* case, *supra*, since, in the case of chattels, as in the case of property being an interest in land, actual possession is to be disregarded if for full consideration in money or money's worth.

Property passing on the death

By the combined effect of s. 38 (2) (*a*) of the Customs and Inland Revenue Act, 1881; s. 11 (1) of the Customs and Inland Revenue Act, 1889; s. 2 (1) (*c*) of the Finance Act, 1894; s. 59 (1) and (3) of the Finance (1909–10) Act, 1910, and s. 47 of the Finance Act, 1946, property passing on the death of the deceased is deemed to include property taken under any gift, whenever made, of which *bona fide* possession and enjoyment were not assumed by the donee immediately upon the gift and either thenceforth retained or (by means of the subsequent surrender of the reserved benefit or otherwise) enjoyed for the appropriate statutory period preceding the death of the deceased to the entire exclusion of the donor or of any benefit to him by contract or otherwise (Green's Death Duties, 4th ed., p. 98).

Conditions governing exemption from duty

Accordingly, if gifts *inter vivos* made outside the statutory periods (at least one year before the death in the case of public or charitable gifts or at least five years before the death in every other case) are to escape duty, the following three conditions must be satisfied:

(1) Assumption by the donee, either in person or through agents or trustees, of *bona fide* possession and enjoyment of the property given. This condition is taken as satisfied if possession and enjoyment were assumed outside the statutory period, even if they were not assumed immediately upon the gift.

(2) Retention of such possession and enjoyment to the entire exclusion of the donor from such possession and enjoyment. This condition is not satisfied if the deceased, though entirely excluded at the outset, subsequently, with the concurrence of the donee, resumed a measure of possession and enjoyment (*Commissioner of Stamp Duties* (*N.S.W.*) v. *Permanent Trustee Co.* (*N.S.W.*) [1956] A.C. 512). But, before the Finance Act, 1959, at all events, it was not necessary that the donor should have been physically excluded from the property. In the case of a gift of a house, if the donee had taken possession and become the head of the house, duty was not payable by reason merely that the donor resided there as his guest (*Lord Advocate* v. *McTaggart-Stewart* (1906), 8 F. 579; *A.-G.* v. *Seccombe* [1911] 2 K.B. 688). Duty would be payable, however, if there was an agreement to provide lodging (*Revenue Commissioners* v. *Donohoe* [1936] Ir.R. 342).

(3) Retention of such possession and enjoyment to the entire exclusion of the donor from any benefit by contract or otherwise. It has been said that the words " by contract or otherwise " must be construed in accordance with the *ejusdem generis* rule and that the benefit, to attract duty, must be enforceable (*A.-G.* v. *Seccombe*, *supra*; *cf. A.-G.* v. *St. Aubyn* [1950] 2 K.B. 429). In this respect the New South Wales legislation differs from the British legislation since in New South Wales a benefit to the donor " whether enforceable at law or in equity or not " is sufficient to make the gift dutiable. In both countries, however, what an owner keeps back is no gift (*Wheeler* v. *Humphreys* [1898] A.C. 506) and if he gives only a partial or limited interest in certain property, the interest which he retains cannot be regarded as a benefit in respect of the gift of the former interest. So, in *Munro* v. *Commissioner of Stamp Duties* (*N.S.W.*) [1934] A.C. 61, where there was a gift of farms which, before the gift, were occupied by the donor and others in partnership, it was held that the rights of the partnership were not part of the property given, and that the donor's possession and enjoyment *qua* partner were, therefore, not possession and enjoyment of the gifted property. In *Chick's* case, *supra*, on the other hand, the gift preceded the partnership agreement.

Dicta in *Chick's* case

Section 102 of the New South Wales Stamp Duties Act, 1920–56, provides that: " For the purposes of the assessment and payment of death duty . . . the estate of a deceased person shall be deemed to include and consist of the following classes of property: . . . (2) (*d*) Any property comprised in any gift made by the deceased at any time . . . of which *bona fide* possession and enjoyment has not been assumed by the donee immediately upon the gift and thenceforth retained to the entire exclusion of the deceased . . ." This limb of the enactment is therefore identical with the British legislation.

In 1934 a father transferred by way of gift to his son a pastoral property without reservation or qualification or condition. Some seventeen months after the gift, the father, the donee son and another son entered into an agreement to carry on in partnership the business of graziers and stock dealers. The agreement provided that the decision of the father should be final and conclusive on all matters relating to the conduct of the business; that the capital of the business should consist of the livestock and plant then owned by the respective partners; that the business should be conducted on the respective holdings of the partners and that such

holdings should be used for partnership purposes only; that all lands held by any of the partners at the date of the agreement should remain the sole property of such partner and should not be deemed to be an asset of the partnership, and that any such partner should have the sole and free right to deal with it as he might think fit. Each partner owned a property, that of the donee son being the property given him in 1934, and their three properties were thenceforth used for the depasturing of the partnership stock. The father died in 1952.

It was not disputed that the donee had assumed *bona fide* possession and enjoyment of the property immediately upon the gift to the entire exclusion of the deceased. The question was whether he thenceforth retained it. The Judicial Committee held that he did not, for under the partnership agreement the partners and each of them were in possession and enjoyment of the property so long as the partnership subsisted. Viscount Simonds said: "Where the question is whether the donor has been entirely excluded from the subject-matter of the gift, that is the single fact to be determined. If he has not been so excluded, the eye need look no further to see whether his non-exclusion has been advantageous or otherwise to the donee." It was irrelevant, said his lordship, that the father gave (if he did give) full consideration for his right as a member of the partnership to possession and enjoyment of the property that he had given to his son.

The gifted land had not been leased to the partnership by separate deed for the good reason, it may be thought, that in *Lang* v. *Webb* (1912), 13 C.L.R. 503, at p. 517, Isaacs, J., said this: "The lease, however, gave to the donor possession and enjoyment of the land itself, which is a simple negation of exclusion, and brings the case within the statutory liability. It was argued that as the rent was full value, the lessee's possession and occupation were not a benefit. The argument is unimportant because the lease, at whatsoever rent, prevents the entire exclusion of the donor."

In *Chick's* case, *supra*, Viscount Simonds said that this view of s. 102 (2) (*d*) of the New South Wales Stamp Duties Act, 1920–56, had never been departed from, and their lordships adopted the words of Isaacs, J., in that case. It was argued for the appellants, however, that the partnership agreement created no interest at all in the gifted land and that *Commissioner of Stamp Duties* (*N.S.W.*) v. *Owens* (1953), 88 C.L.R. 67 (where similar facts prevailed) was wrongly decided, but the Judicial Committee approved the reasoning and conclusion of the majority of the Supreme Court of New South Wales in that case.

Mischief of the *dicta*

Before the decision in *Chick's* case it was not uncommon for a father to make a gift of land to his son, and then for the son to grant a lease back of the property, or part of it, to the father at a full annual rent. This was effective in saving estate duty for the reason stated in Hanson's Death Duties, 10th ed., para. 594, *viz.*, that if *A* gives *B* a house, but continues to occupy it under a lease at rack rent, *B* has the *de jure* possession and the *de facto* enjoyment of a proprietor and no outright gift could give him more, and therefore duty was not considered to be payable, since the donor's possession was not related to, nor an incident of, his former proprietorship. The position was accepted by the Inland Revenue, and the Solicitor-General, when moving the second reading of the new clause in the Finance Bill (see House of Commons Parliamentary Debates, 10th June, 1959, col. 1095), stated it in these terms: ". . . but hitherto in this land we have always thought that it (the legislation relating to gifts outside the five years period) excluded the case in which the donor came into occupation of what had previously been given, pursuant to a lease from the donee for which he paid the full economic rent, because that is a case in which the donor is paying in full for the use of what he has given and the donee is receiving the full benefit of the gift just as if he had let it to some third party in the market."

Following the *Chick* case, however, the Treasury intimated to The Law Society that in future the practice of the Inland Revenue would be altered to accord with the decision in that case. Naturally this intimation came as something of a blow to the many people who had entered into transactions in accordance with the previous practice in the belief that they would be perfectly effective; and accordingly representations were made to the Treasury by The Law Society, the Country Landowners' Association and other bodies for an amendment of the law. Section 35 (2) of the Finance Act, 1959, is the result, the Solicitor-General saying in the House of Commons that "[*Chick's*] is a hard case and ought to be put right because the circumstances may be wholly *bona fide*."

The new enactment

Subsection (1) provides that in the case of persons dying after the coming into operation of s. 35, any provision of the enactments relating to estate duty which imposes, in connection with a gift of property, or the disposition or determination of an interest in property, a condition that property shall have been possessed or enjoyed by a person to the entire exclusion of another person or of any benefit to him by contract or otherwise shall be applied in accordance with the provisions of subss. (2), (3) and (4) of s. 35. Subsection (2) enacts that in the case of property being an interest in land, or being chattels, retention or assumption by the donor of actual occupation of the land or actual enjoyment of an incorporeal right over the land, or actual possession of the chattels, shall be disregarded if for full consideration in money or money's worth; and subs. (3) that in the case of a gift, a benefit which the donor obtained by virtue of any associated operations (as defined by s. 59 of the Finance Act, 1940) of which the gift is one shall be treated as a benefit to him by contract or otherwise. By subs. (4) the section is to be construed as one with Pt. I of the Finance Act, 1894.

Effect of the enactment

It will thus be seen that subs. (2) restores the pre-*Chick* position in relation to land and interests in land, but goes further and confers the same benefit in relation to chattels, which, if given away and then hired back for full consideration in money or money's worth, will escape duty subject to compliance with the other statutory conditions. Section 40 (1) and (2) of the Finance Act, 1930, already provides that such pictures, prints, books, manuscripts, works of art, scientific collections or other things not yielding income as, on a claim being made to the Treasury, appear to them to be of national, scientific, historic or artistic interest, shall not be taken into account for the purpose of estimating the principal value of the estate or the rate at which estate duty is chargeable and shall, while enjoyed in kind, be exempt from death duties. It would thus seem that the new provision will have a practical application only to such chattels as fail to qualify for exemption under the Act of 1930, or are capable of yielding income, but that the range of such chattels may nevertheless be a

very wide one. In the world of art many interesting possibilities may well be opened up.

On the motion for the Second Reading of cl. 35 of the Finance Bill, the Solicitor-General said subs. (3) " corrected a weakness in . . . the law in favour of the Revenue." " The weakness," he said, " is this : supposing the donor gives a gift but receives a benefit by a wholly separate and distinct transaction. An example would be if *A* makes an out-and-out gift to *B* and then *B* grants to *A* an annuity equal to the annual value of the land. The Revenue can extort duty only if it can link the two transactions. It is sometimes remarkably difficult to do it, but it ought to be done in the true case. The committee will remember that we put this right in the Finance Act, 1950, in relation to surrenders of life interests. We did it by enacting that benefits received by virtue of any operation associated with the surrenders were to be taken into account in the context. Subsection (3) of the new clause makes an exactly parallel enactment in relation to gifts *inter vivos* to cure that weakness. That is all it does."

Nevertheless, in view of the wide definition of " associated operations " in s. 59 of the Act of 1940, it does quite a lot. It is quite inevitable that many gifts which have hitherto escaped duty, because some benefit obtained by the donor could not be linked with the gift, will now be caught in the estate duty net. It was held in *Oakes* v. *Commissioner of Stamp Duties* (*N.S.W.*) [1954] A.C. 57, however, that it is not sufficient to take the situation as a whole and find that the donor has continued to enjoy substantial advantages which have some relation to the gifted property. Each advantage must be considered separately to determine whether it is a benefit within the statute.

The reference by the Solicitor-General to surrenders of life interests in the Act of 1950 is to s. 43 of that Act, which remedied certain defects in s. 43 (1) and (2) of the Finance Act, 1940, which were revealed in *A.-G.* v. *St. Aubyn* (*No.* 1) [1950] 2 K.B. 451. The amended version of s. 43 (1) and (2) is set out in full in Pt. II of Sched. VII to the Finance Act, 1950.

K. B. E.

Common Law Commentary

PENNY ON THE BOTTLE?

An interesting point arose in *Beecham Foods, Ltd.* v. *North Supplies* (*Edmonton*), *Ltd.* [1959] 1 W.L.R. 643 ; p. 432, *ante*, which does not seem to have been fully answered in the decision. It arises from the provisions of s. 25 (1) of the Restrictive Trade Practices Act, 1956, which provides that where goods are sold by a supplier subject to a condition as to the price at which they may be resold, that condition may be enforced by the supplier against any person not party to the sale who subsequently acquires the goods with notice of the condition as if he had been party thereto.

The plaintiffs traded, *inter alia*, under the registered name of the Lucozade Company, supplying Lucozade for resale at 2s. 9d., being 2s. 6d. for the drink and 3d. for the bottle. Through a subsidiary company which acted as distributor of the goods notice was given of the conditions on which the goods were supplied. On the label the price was marked as 2s. 6d. with a statement " plus 3d. deposit returnable on the bottle with stopper." In the distributor's retail price list there is a statement that Lucozade bottles are charged at 3s. per dozen refundable, followed by the statement " actual ownership of the bottles does not pass to the customers although a charge for them is made."

The defendants were cut-price grocers who sold Lucozade for 2s. 7d., and the plaintiffs brought these proceedings for an injunction to restrain the defendants from reselling Lucozade, etc., at prices less than the fixed retail prices, contrary to s. 25 (1) of the Act.

The plaintiffs maintained—according to the judgment—that there was a fixed retail selling price of 2s. 9d. and that in consequence of the sale at 2s. 7d. there was a breach of that condition. Vaisey, J., pointed out that the bottle was not sold but only hired, and that there was, therefore, not such a retail selling price. The Act does not apply to the hire of goods and hence, in this case, did not apply to the hire of the bottles.

Wrong inference?

His lordship said, in regard to the trap orders at 2s. 7d., that the purchasers, " in my judgment, may fairly be said to have paid the full and correct price of 2s. 6d. for the liquid but only 1d. for or towards the hire of the bottle. In my judgment, however, the bottle in this transaction was never sold at all, but was merely lent or hired as a convenient receptacle for carrying the liquid home. The same result follows if 2s. 9d. is paid by a customer. In either case I interpret the transaction as a payment of 2s. 6d. in full as the price of the liquid and 3d. or 1d. for the hire of the bottle.

" The matter may be looked at in a variety of ways. For example, a customer may go into a shop, ask for a bottle of Lucozade, fill up his own flask from the contents and hand back the bottle with its stopper across the counter to the shop man. What has he to pay? Surely 2s. 6d. The suggestion that he must pay 2s. 9d. and a minute or two later ask for 3d. back is reducing a very ordinary transaction to an absurdity."

It is pertinent to find the answer to the question : " What has he to pay? " Would not the cut-price grocer charge only 2s. 4d.? Why is it inferred that of the 2s. 7d. only 1d. is charged for the bottle? Was there any evidence on this, because, if so, it is not referred to in the report?

Consider the position *vis-à-vis* the supplier : the retailer pays an extra 3s. per dozen on his supplies above the actual cost of the liquid, in respect of the bottles. When the retailer returns any bottles he gets credit for 3s. per dozen and these sums in relation to the bottles cancel out. If, therefore, he has sold the goods at 2d. less than the intended price, he has suffered a loss of 2d. per bottle on the liquid and not on the bottles. It is submitted that the bottles are irrelevant and that there is a breach of the Act by the sale of the liquid at 2s. 4d. in effect. But the hub of the case must be found in the answer to the question, what does the cut-price grocer give to his customers who return their bottles : 3d. or 1d. ? Asking the right questions is as important as seeking correct answers to questions that have been asked.

It is not clear from the report whether this argument was advanced or not, but if it was, the judgment does not supply an answer.

L. W. M.

Practical Conveyancing

SPECIMEN EPITOME OF TITLE

THE opinion of the Council of The Law Society published in the *Law Society's Gazette* for July, 1959, pp. 451 and 452, indicated how an abstract of title might be provided by means of an epitome accompanied by photographic copies of documents. In our issue of 17th July, on p. 551, *ante*, we published a specimen layout of an epitome which appeared to us to comply with the suggestions of the Council. We have been very much assisted by a number of letters from readers, some of whom disagree materially with the layout proposed. We have now reconsidered the problem in the light of this correspondence, and an amended form is given in the Table on p. 668, *post*.

It may assist readers if we remind them, first, of the requirements which must be complied with if the suggestions of the Council of The Law Society are to be adopted completely :—

1. The abstract of title may be wholly or partly in the form of an epitome. The Council describe this as being of the nature given in Sched. VI to the Law of Property Act, 1925, but they do not state that the forms there set out shall be followed precisely. Some variation of the wording used in that Act is essential because it was intended to indicate the documents and events which should be mentioned in an abstract in conventional form.

2. The epitome must state the stamp duty, the dates of documents or events and their nature, and the parties.

3. The epitome must identify the accompanying documents by numbering or lettering.

4. It must be accompanied by photographic copies, or examined abstracts where appropriate, or photographic copies of examined abstracts of the documents.

5. An indication must be given in the epitome or on the copies of any parts of the documents not relevant to the transaction.

Observations on requirements

It is important to note that the abstract may be delivered " wholly or partly in the form of an epitome ". As it may be in part only in epitome form, we think that the practice should be adopted of making the sheets abstract size. If part of the title is to be covered by an ordinary abstract, then it would seem most convenient that such abstract, together with photographic copies of documents in the remainder of the title, should be enclosed within the sheet or sheets containing the epitome.

Although the Council speak of an epitome being accompanied by " examined abstracts where appropriate," it is clear that it may be accompanied by an unexamined abstract, which is supplied in respect of part of the title. In a case such as this it seems that the Council of The Law Society envisage that part of the title will be dealt with by a normal abstract, and the remainder of the title will be deduced by the provision of the epitome accompanied by (i) photographic copies of documents or (ii) an examined abstract or (iii) a photographic copy of an examined abstract. We would suggest, however, that where the new form is to be used in respect of any part of the title it would be very helpful if the epitome were prepared in such a manner as to cover the whole of the title, even though a large number of the documents are abstracted in an ordinary unexamined abstract which is sent to the purchaser's solicitor. Whether it is reasonable to expect this must depend mainly on the extent of the ordinary abstract of title compared with the extent of the documents copied photographically.

Readers' comments

Messrs. Onions and Davies, in their letter published at p. 584, *ante*, criticised the form we proposed provisionally (p. 551, *ante*) on the ground that it stated the date of the will of a testator who died in 1931, and suggested that the date of death need be given (if at all) only in the entry relating to the probate. The present writer agrees with them (compare Emmet on Title, 14th ed., vol. I, p. 142) and an appropriate amendment has been made. The fewer entries there are on an epitome the better and it is wise to discourage references to wills of persons who have died after 1925. The point has been taken by other correspondents (including one who did not wish his letter to be published, although it was most helpful and even advocated some changes in the recommendations of the Council).

There is room for some difference of opinion, however, as to the exact wording of the entry as to the probate. We have retained a reference to the date of death of Edward Haddock although we admit that it need not be given. On the other hand, the form we now suggest does not mention (i) the registry in which the will was proved or (ii) the relationship of Margaret and Percy. The abstract will show these facts but they are not important to a purchaser.

The letter from Mr. R. F. Rigby (p. 602, *ante*) suggested a separate schedule of searches, and that from Mr. R. L. Crowther (*ibid.*) went further and called for details of searches made since 1925 and even for brief particulars of documents of title back to the last conveyance before 1926. Mr. Crowther's laudable purpose was to ensure that complete searches had been made or could be made covering all periods since 1925.

Whether searches should be abstracted is a question which arises whether or not the new forms are used. We agree with Mr. Crowther that " it is now accepted, as normal good conveyancing practice." The present is, however, an opportunity for drawing attention to the advantages of this practice, and the suggested form of epitome is well designed for including particulars of search certificates. For example, the date of search can be given in the first column, the particulars of the search in the second column, and the names of the parties against whom search has been made in the fourth column. There would then be no need to copy the certificate. Our view is that this is more convenient than the separate schedule of searches mentioned by Mr. Rigby.

Readers will remember the discussion which took place a few years ago about the danger to a purchaser that may be caused by entries in the land charges register after 1925 but before the root of title. The root of title under an open contract may now be after 1925 but before September, 1929. So a purchaser may be unable to ascertain not only whether searches were made between those dates but even the names of persons against whom search should have been made for purposes of past transactions or should now be made. Nevertheless, the purchaser is deemed to have actual notice of any matter registered (Law of Property Act, 1925, s. 198).

This matter was investigated by the Roxburgh Committee on Land Charges, who concluded that " the framers of that

Act have posed for us a problem which is insoluble until it solves itself upon completion of the registration of all titles to land; and we must content ourselves with pointing out that few cases of injustice are in practice likely to occur" (Cmd. 9825, para. 4). At first sight we were tempted to comment that Mr. Crowther had suggested a procedure which would provide a solution; but the Roxburgh Committee considered a similar proposal, namely, that a vendor under an open contract should be bound to produce a list of estate owners since 1st January, 1926, and rejected it. They noted that many purchasers accept less than thirty years' title and they did not favour prolonging the period of investigation of title. We appreciate that Mr. Crowther suggested merely that the epitome should give essential particulars and not that there should be a full abstract before the root of title, and also that he advocated the establishment of a practice rather than any change in the law. We are obliged to conclude that, on principle, his suggestion is a very good one but, for reasons similar to those given by the Roxburgh Committee, we doubt if many solicitors will be prepared to adopt it.

The first criticism made by Mr. A. E. Parker (p. 615, *ante*) is one which occurred to the present writer on studying the earlier specimen. If an epitome (or an abstract in conventional form) is headed with the description of the property it is not necessary to state the name of the party whose title is being deduced. An epitome which does not contain that name in the heading can be used on a further transaction merely by making the necessary additional entry or entries. Now is the time, surely, for solicitors to do all they can to reduce clerical work.

Mr. Parker also suggested an alternative to the note in the column "Whether document to be handed over" against the mortgage of 29th April, 1953, namely, that details of the forthcoming receipt (leaving the date blank) should be given and a note of the matter made in correspondence. For the present we prefer to omit any reference to the receipt in the epitome on the ground that its purpose is to show title which, at the date of delivery of the abstract, is subject to the mortgage. If the matter is to be mentioned in correspondence no further entry in the epitome seems necessary and we adhere to the view that the best procedure is to indicate in the appropriate column how the mortgage deed will be dealt with.

We have left until last the consideration of the views of Mr. T. W. Pinnock (p. 602, *ante*). He pointed out the many possibilities of photographic copying, for instance, of copying smaller documents on to brief sheets, of masking out irrelevant passages and of adding notes. Consequently he advocated preservation of the existing make up of an abstract as a bundle of brief sheets sewn together, adding any notes or comments necessary, and he illustrated how that could be done in the case of our specimen title. Except in so far as an existing abstract exists, Mr. Pinnock would copy conveyances and other documents in full, and so produce one document (often partly an abstract and partly photographic copies of original documents). We can see many advantages in his method and it may well be acceptable in the future. It seems, however, that for the present it does not comply with the requirements advocated by the Council of The Law Society. Their blessing has not yet been given to the supply of copies of documents forming part of a title except so far as their effect is stated in an epitome and irrelevant parts are marked. Several correspondents have criticised those requirements and it must be agreed that there are alternatives which may be as good (or even, in some respects, better). However that may be, we think that for some time the profession should adopt the system the Council have approved. Uniformity is very advantageous, and they are the only body whose authority is such that their views are likely to be followed by solicitors. Consequently, we do not wish at this stage to depart from the exact requirements of the Council.

Amendments to specimen

Most of the changes we have made in the form printed on p. 551, *ante*, have resulted from criticism and comment from readers which have already been mentioned. We would draw attention, however, to a few other amendments.

In the first place, we have altered the order of the columns. The normal order in which one looks for particulars of a document is, date, nature, parties, and it is thought advisable to state the stamp duty in a later column.

In our previous specimen the third column was headed "Nature and effect of document." It is suggested that if the property dealt with by any document differs from that in respect of which the title is deduced, a brief description should be added to the entry in col. 2. For example, it is useful to know that the conveyance of 23rd April, 1926, was of a site with other property. On the other hand, there is no intention of endeavouring to state the legal effect of the document. That is a matter on which a purchaser's solicitor must satisfy himself. Consequently, the words "and effect" have been deleted from the heading of what is now the second column.

We previously suggested a column stating the custody of the original document. The present writer is in entire agreement with those correspondents who have criticised this entry. It is quite impossible after twenty or thirty years to state the custody of many original documents, and so we have now omitted any reference to that fact. The column which states whether the document is to be handed over on completion has been retained, however. Many solicitors prefer to draft a conveyance at the same time as they prepare requisitions on title, and they then frequently do not know whether certain documents will be handed over. It is helpful, therefore, to state the fact when the abstract of title is delivered, so that the purchaser's solicitor knows whether he need include an acknowledgment or undertaking in the draft conveyance. The word "original" has been added to the heading in order to avoid the misapprehension (which has arisen in correspondence) that the column may relate to an abstract or copy.

It is not intended to carry out the suggestion made at p. 552, *ante*, that the answers to certain expected requisitions might be included in the epitome. The epitome should be as brief as possible, and one is treading on dangerous ground. It is doubtful whether a solicitor should accept information in this form, as it is far from certain that it has the same effect as an answer to a requisition.

The fifth column has been headed "Whether abstract or photographic copy." There is no authority for providing a full copy other than a photographic copy; perhaps practice may permit this, but the present advice of the Council of The Law Society is substantially that if a document is not photographically copied it should be abstracted.

There is ground for difference of opinion as to how the various enclosed documents should be identified, and as to the manner in which the identification should be stated in the epitome. It is recommended that the entry should be in the fifth column. The comment has been made that numbering of copies will cause difficulty on subsequent transactions, when renumbering will be necessary. We think any confusion can easily be avoided. If a later root of title is offered it may sometimes be possible to use the same epitome by deleting

early entries (and removing corresponding copy documents) and then adding recent entries. Even if a new epitome is prepared, the first document on it need not be numbered one; it would be convenient to leave unchanged the numbers which were placed on the photographic copies when they were first used.

Although the Council of The Law Society say that the indication of the parts of documents not relevant may be given either in the epitome or on the copies, it is strongly suggested that the marking should be on the document itself.

We regret that we could not at this stage agree with the proposal of Mr. R. F. Rigby (p. 602, *ante*) that the first conveyance, which deals with the property as a single entity, should alone be copied, and that subsequent ones dealing with the same property should merely be included in the epitome. A purchaser is entitled to have sufficient information by abstract or copy to judge for himself the effect of each document, and we must express the opinion that adoption of this procedure would result in the delivery of an inadequate abstract.

Preparation of forms

The Solicitors' Law Stationery Society, Limited, propose to publish forms ruled and headed as in the Table with brief notes. It is thought that these will provide a basis for the preparation of epitomes in accordance with the opinion of the Council of The Law Society. There is nothing to prevent any solicitor devising his own form, although it is desirable that there should be no departure from the views of the Council. Further, the contents of the published form are not firmly determined by the headings and the rulings, and so a reasonable margin is left for variation according to individual views and requirements. It is proposed that a back sheet should be available endorsed as the abstract of title on the assumption that it will contain all the documents necessary to deduce a good root of title in accordance with the contract. It will usually be possible to fold the bundle of documents twice in order to send it through the post. On the other hand, where an appreciable number of photographic copies are provided, it will be desirable to keep the documents folded once only, and the back sheet has been endorsed on this basis. Most

TABLE

EPITOME OF TITLE RELATING TO FREEHOLD PROPERTY KNOWN AS "THE TRAWL," CRAN LANE, HERRING-ON-SEA, IN THE COUNTY OF BARSET

Date	*Nature of document*	*Parties*	*Stamp Duty*	*Whether abstract or photographic copy*	*Whether original document to be handed over on completion*
23rd April, 1926	*Conveyance* of site of "The Trawl" with other property	1. Frederick Skate 2. Edward Haddock	£31	Copy of examined abstract Document 1	No.
1st July, 1931	*Probate* of the will of Edward Haddock who died on the 17th February, 1931, granted to Margaret Haddock and Percy Haddock		—	The same	No.
20th September, 1934	*Conveyance* of site of "The Trawl" with other property	1. Margaret Haddock and Percy Haddock 2. Robert Place	£3 P.D.S.	The same	No.
21st September, 1934	*Legal Charge* of site of "The Trawl" with other property	1. Robert Place 2. Piscatory & General Insurance Co., Ltd.	£1	The same	No.
15th July, 1940	*Further Charge*	The same	10s.	The same	No.
4th June, 1946	*Statutory Receipt* endorsed on two previous deeds		6s.	The same	No.
6th June, 1946	*Legal Charge*	1. Robert Place 2. Dogger Bank, Ltd.	£2 10s.	The same	No.
14th October, 1946	*Statutory Receipt* endorsed on previous deed		10s.	The same	No.
11th November, 1946	*Conveyance* of "The Trawl"	1. Robert Place 2. Elizabeth Soul and Caroline Pyke	£15 P.D.S.	Copy Document 2	Yes.
17th November, 1950	*Conveyance* of "The Trawl"	1. Elizabeth Soul and Caroline Pyke 2. James Cockle	£69 P.D.S.	Copy Document 3	Yes.
29th April, 1953	*Conveyance* of "The Trawl"	1. James Cockle 2. John Codd and Mary Codd	£71 P.D.S.	Copy Document 4	Yes.
29th April, 1953	*Mortgage* of "The Trawl"	1. John Codd and Mary Codd 2. Barchester Building Society	£5	Copy Document 5	This will be discharged on completion and an undertaking given to hand over the receipted mortgage within 21 days.

copies will be of draft size, and so the bundle will not always be convenient to handle. Copies are usually produced on thin paper, however, and so it will be possible to attach them to the epitome and back sheet in a reasonably convenient and stable manner.

We are grateful to readers of THE SOLICITORS' JOURNAL who have made many very useful recommendations, most of which have been put into effect in the form now proposed. The extent to which this new procedure is adopted depends, in the main, on the speed with which photographic copying becomes used in solicitors' offices. There have been indications of growing interest in the various processes as staff problems do not diminish and promptitude becomes more and more important.

J. GILCHRIST SMITH.

A Conveyancer's Diary

TRUST INVESTMENTS

THE Lord Chancellor's announcement in May last that a comprehensive scheme for extending the range of trustee investments, not only in the case of charitable trusts (which was the subject of the debate in the course of which this announcement was made), but in the case of all trusts, was immediately welcomed in all quarters. Apart from the calamitous effects of inflation on such investments, the authorised range has been considerably contracted by such factors as the policy of nationalising various public utility undertakings, or the *de facto* elimination from this range of such investments as Indian railways stock. Section 1 of the Trustee Act, 1925, has become hopelessly outmoded. It is hoped that, when the new legislation is framed, the Government will have learnt from experience that a statute is too inflexible an instrument for regulating a matter which, in present circumstances, is essentially fluid, and accept the suggestion which was made in a note at p. 396, *ante*, that detailed alterations in the range of authorised trustee investments should be capable of being made by statutory instrument.

Re Royal Naval and Royal Marine Children's Homes, Portsmouth

The announcement produced a swift reaction in the courts. In *Re Royal Naval and Royal Marine Children's Homes, Portsmouth*; *Lloyds Bank, Ltd.* v. *A.-G.* [1959] 1 W.L.R. 755; p. 676, *ante*, Roxburgh, J., had before him an application by the trustees of this charity, whose powers of investment were limited to the authorised range, for an extension of those powers which would permit them to invest in, among other things, the ordinary shares of many limited companies. The scheme which the trustees propounded was approved, but subject to an important limitation. The learned judge referred to the Lord Chancellor's announcement and said that in his view, having regard to that announcement, any further orders made to enlarge the range of investments for charitable funds should be interim orders only, limited to take effect until the law regulating the investment of trust moneys generally should be amended. The order was made accordingly, "unless and until the law relating to the investment of trust moneys generally shall be amended by Parliament (but without prejudice to any investment made pursuant to this order prior to the aforesaid Act of Parliament coming into effect)."

Limitation upon trustees' powers

This was an order made in the case of a charity, but this limitation upon the trustees' powers as extended by the court is a matter of principle which affects all trusts, charitable or private. A very common kind of application under the Variation of Trusts Act, 1958, in the case of private trusts (to which alone the Act applies) has been one for an extension of investment powers, and I think it may be taken as highly probable that any order made under this Act in the future will contain a similar limitation.

There are two further points in connection with the order made in this case. First, the substance of the order, i.e., the permitted range of investments which was thereby substituted for the range authorised by the Trustee Act, 1925, followed, with a few modifications which no doubt the passage of time has proved to be desirable, the order made a few years ago in *Re Royal Society's Charitable Trusts* [1956] Ch. 87. The really important extensions of the existing powers authorised investment in (i) the purchase of land situated in the United Kingdom (freehold or leasehold, held for a term of which at least 200 years are unexpired at the date of purchase), and (ii) the debentures or debenture stock or the stock or shares (guaranteed, preference, ordinary or deferred) of any company incorporated in the United Kingdom or under the laws of the Dominions of Canada, Australia or New Zealand, or the United States of America, or any state thereof. As to land, the learned judge observed in the course of the argument that, provided that facilities for proper management existed, investment in land was the surest method of maintaining the capital value of a fund. (The investment must also usually be a sizeable one.) As to investment in debentures or stocks and shares of companies, the practice since the *Royal Society's* case has been to impose certain important limitations on powers of this nature. In the recent case, these were as follows: the investment must be one which is dealt in or quoted officially on one of the recognised stock exchanges in London, New York, Toronto, Montreal, Melbourne or Wellington; any stock or shares must be fully paid up (with an exception in favour of the stocks and shares of companies incorporated in the United Kingdom carrying on banking or insurance business in the United Kingdom); and in the case of investment in ordinary or deferred stocks or shares, the company must at the time of investment have a paid-up capital of at least £250,000 or its equivalent at the current rate of exchange.

Division of trust fund into two parts

The other point is that since the *Royal Society's* case it has been the practice on all applications of this kind by charities or charitable trustees to order a preliminary division of the fund into two parts, usually of one-third and two-thirds by value respectively, and to direct that the extended powers should apply only to the larger part. One-third of the fund thus remains subject to the provisions of the Trustee Act, 1925, or any other provisions which may be applicable to the particular trust, so far as investment is concerned.

No such division has been insisted upon, so far as I know, in the case of any application to extend the investment

powers of trustees of a private trust under the Variation of Trusts Act, 1958. The reason for this difference of treatment is that in the case of charitable trusts the respondent to any application of this kind is the Attorney-General, without whose co-operation a successful application is impossible, and the Attorney-General has as a matter of policy insisted on a proportion of the fund, not being less than one-third, remaining subject to restricted powers. It will be interesting to see whether this practice will be perpetuated in the pending legislation, and if so, whether private trusts will be treated in this respect in the same way as charitable trusts.

Granting trustees widest powers of investment

Another difference between the two types of trust for this purpose is scarcely less fundamental. In one reported case under the Variation of Trusts Act, 1958 (and, I believe, in one or two other such cases which have not been reported), the court has conferred upon the trustees of a private trust powers of investment over the whole of the fund in the widest possible (" as if the trustees were beneficial owners ") form. (There was some slight confusion at first about orders in this form, it being thought that a power of this kind was only appropriate if the trustees were, or included, a bank or an insurance company, with a specialised staff to advise on investment problems. This is not so: in a proper case, powers in this form can be conferred, as the practice is at present, on any trustees.) The advantages of this wide form are obvious: it is simple to draft and nothing can be left out by accident or lack of prescience. Nevertheless, I think that trustees can often obtain assistance from a list of authorised investments, such as was incorporated in the *Royal Naval Homes* case, and as it is in practice the liberty to invest in ordinary shares of commercial companies incorporated in this country and in selected places overseas that is principally sought, as being (along with investment in land, where that is practically possible) the best protection against inflation, a form which includes that liberty with certain others specifically defined is also not without its advantages. As to this, in the *Royal Naval Homes* case, Roxburgh, J., pointed to the desirability of uniformity in these matters. His lordship had, of course, mainly in mind uniformity in orders made for the regulation of charitable trusts. But the object of any application to extend investment powers is the same, whether the trust is a charitable or a private one, and (the division of the fund into two parts, the " free fund " and the " restricted fund " as they were called in the recent case, excepted) there is much to be said for treating all trusts in the same way for this purpose. It may be, therefore, that the " as if the trustees were beneficial owners " power, which was granted before the *Royal Naval Homes* case was heard, will not be repeated. Certainly, if the trustees of a private trust are content to obtain power to invest in the range of investments specified in the order in this case, they will make the course of their application easier if they seek those powers and nothing wider.

The matters which I have discussed are of temporary interest only. Once an up-to-date investment power is conferred upon all trustees by statute, it will very rarely be possible to obtain a wider power from the court in general terms. Authority to make a particular investment once and for all would still, no doubt, be given under s. 57 of the Trustee Act, 1925. But that is quite a different class of case from those of which I have been writing. Nevertheless, since it may be some time before the promised legislation is with us, and trustees continue to be impatient with the limited powers which is all that so many of them have, some applications of this kind may be expected to continue to be made. For those concerned in such applications, a careful study of the recent cases, including particularly the *Royal Naval Homes* case, is essential.

" A B C "

Landlord and Tenant Notebook

THE LANDLORD AND TENANT (FURNITURE AND FITTINGS) ACT, 1959

It is some years since a well known lay periodical suggested how the restrictions on premiums contained in the Landlord and Tenant (Rent Control) Act, 1949, might be evaded: an estate agent was depicted as saying, " but there's no question of premiums—you merely wager a friendly £500 that the present tenants are not prepared to quit ": 216 *Punch* 276; but the suggestion is cited in a far more serious publication, namely, Megarry's Rent Acts, where it will be found set out in a footnote to chap. IX, section 2 (1), 8th ed., which concerns the definition of " premium." I was reminded of this suggestion by the enactment of the Landlord and Tenant (Furniture and Fittings) Act, 1959, which comes into force on 29th August, and is (so runs the heading) " An Act to regulate the requiring of payments for furniture, fittings or other articles as a condition of the grant, renewal, continuance or assignment of tenancies of dwellings."

Transactions affected

The Act is a penal one, creating, by s. 1 (1), two offences: (*a*) the offering of furniture at an unreasonably high price, and (*b*) the failure to furnish an inventory. I will deal with the details of these later; but the offer or failure, as the case may be, must be made " in connection with the proposed grant, renewal, continuance or assignment, on terms which require the purchase of furniture [which " includes fittings and other articles "], of a tenancy to which for the time being s. 2 of the Landlord and Tenant (Rent Control) Act, 1949 (which prohibits the requiring of premiums), or that section as extended by s. 13 of the Rent Act, 1957, applies ".

The Landlord and Tenant (Rent Control) Act, 1949, s. 2 (3), makes the section applicable to any tenancy of a dwelling-house, being a tenancy to which the principal Acts, the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, apply, such that when the dwelling-house is let under the tenancy it is a dwelling-house to which the principal Acts apply; and the Rent Act, 1957, s. 13, extended the restrictions to tenancies excluded from the application of the Rent Acts (also the Rent, etc., Restrictions Acts, 1920 to 1939) by its own s. 11 (1) and (2)—in other words to *de*controlled tenancies and also to tenancies excluded from the Rent Acts by those provisions and by s. 12 (7) of the Increase of Rent, etc., Restrictions Act, 1920. The latter contains the provision

excluding tenancies with a rent less than two-thirds the rateable value. This extended restriction on premiums is limited to three years from the commencement of the Rent Act, 1957, i.e., to remain in force till 6th July, 1960; which, no doubt, accounts for the " tenancy to which for the time being " in s. 1 (1) of the new Act.

" On terms which require "

It was pointed out in *Woods* v. *Wise* [1955] 2 Q.B. 29 (C.A.) that payment and acceptance of a premium were not made illegal by the 1949 Act: the operative words are " A person shall not . . . *require* " and " as a condition of the grant." The wording of s. 1 (1) (*a*) of the new statute is more stringent. It may well be that no offence is committed by a landlord or assignor who accepts an offer to buy furniture in connection with the grant or assignment; that such an offer would be made is, of course, unlikely, and the mere offer of furniture by the landlord or assignor, once the terms, and not he, " require " its purchase, may satisfy the requirement of the subsection as far as the nature of the contract is concerned, and that though no " condition " is put forward.

The offer

The first of the two new offences, then, is to offer, in connection with the proposed grant, etc., on terms requiring the purchase of furniture, the furniture " at a price which he knows or ought to know is unreasonably high, or otherwise seeks to obtain such a price for the furniture." Clearly, sound imagination has been used, but it may be difficult to establish either that the person knew or ought to have known, etc. Perhaps more difficulty is likely to be encountered in connection with the words " unreasonably high." The actual expression has not, I believe, been used before; but s. 3 of the 1949 Act, with a similar object in view, provides that where the purchase of furniture, etc., has been required as the condition of the grant, etc., to which s. 2 applies and " the price exceeds the reasonable price of the articles," the excess is to be treated as if it were a premium required to be paid as a condition, etc. There was a useful discussion about what is meant by " the reasonable price " in *Eales* v. *Dale* [1954] 1 Q.B. 539 (C.A.), in which the court negatived the proposition that market value was the criterion, and held that all relevant circumstances must be taken into consideration. But the number of factors which may affect the question is considerable. The decision would show that a landlord or assignor who has managed to secure, or has had specially made, some particular article of furniture which fitted a particular alcove in the dwelling-house, or fitted in with the architectural design, is not to be fined if he offers it at more than it would fetch in a sale room; but the " ought to know " of s. 1 (1) (*a*) appears to be designed to dispose of one part of Evershed, M.R.'s judgment.

Inventory

The other new offence is expressed as follows: ". . . fails to furnish, to any person seeking to obtain or retain accommodation whom he provides with particulars of the tenancy, a written inventory of the furniture, specifying the price sought for each item "; and s. 3 (2) of the 1949 Act, which merely obliged the seller to state the price of all the furniture, etc., sold in writing if so requested by the purchaser, is repealed. The maximum penalty for refusing—without reasonable excuse—to give the written statement requested, or for knowingly giving a statement which was false in some material particular, was a fine of £10; the offence created by the 1959 enactment is punishable by a fine not exceeding £100.

The new enactment is certainly radical, but casts a somewhat heavy burden on some landlords or assignors, e.g., one who, in connection with the grant or assignment on terms which require the purchase of " furniture," may wish to sell his library. He may go to considerable trouble in preparing the required inventory and then fail to come to terms with the person seeking to obtain or retain accommodation. True, the obligation does not arise till he provides particulars of the tenancy; but " particulars of the tenancy " is a somewhat vague expression.

Enforcement

The rest of the section contains ancillary provisions mostly concerned with enforcement of the first of the bans on " offering ". A local authority which has " reasonable grounds " for suspecting that an offence has been committed under para. (*a*) as respects a tenancy *or proposed* tenancy of any premises may give notice to the person entitled to possession of the premises, or to his agent, that on a specified date facilities will be required for entry on the premises and inspection of the furniture. They may authorise someone to avail himself of those facilities, and on the person notified failing to give them they may obtain a warrant from a justice of the peace authorising forcible entry; wilful obstruction is, of course, a separate offence. The authorised or empowered person may take others with him " and if the premises are unoccupied shall leave them as effectively secured against trespassers as he found them ". The Act does not say in terms what can happen if he omits to comply with this; presumably the famous *Six Carpenters' Case* (1610), 8 Co. Rep. 146*a*, would govern the situation, the persons authorised, and possibly the authorising authority, being trespassers *ab initio*. Incidentally, the compliance may cost the ratepayers something for new locks and the like.

The local authority is also authorised to institute proceedings, and our overworked police are not likely to concern themselves much with the new Act. But, as I have mentioned, it is purely a penal enactment; and it does not repeal the Landlord and Tenant (Rent Control) Act, 1949, s. 2 (5), entitling the person who has *paid* a premium made illegal by that section, i.e., one required as a condition of (not merely in connection with) the grant, etc., of a tenancy to which it applies, to recover the payment.

R. B.

LOCAL GOVERNMENT COMMISSION FOR ENGLAND

The Local Government Commission for England, under the chairmanship of Sir Henry Hancock, K.C.B., K.B.E., C.M.G., appointed to review the main structure of local government and recommend such changes as they find necessary, have now decided on the next stage of their programme. They are to review the areas of Tyneside and West Yorkshire Special Review Areas: the surrounding geographical counties of Northumberland, Durham and Yorkshire; the geographical counties of Derby and Nottingham; the geographical counties of Gloucester, Somerset, Devon and Cornwall and the Isles of Scilly.

HERE AND THERE

RELAXED DRIVING

In one of those newspapers (as they are still laughingly called) which are mostly pictures with sugar-pill entertainment in between, I have just read a fascinating piece about a millionaire international playboy who likes driving his great Thunderbird with his bare feet; he slips out of sight into the back with his legs stretched over the front seat and to the wayfarer the car seems to be driving itself. That sort of driving is, I suppose, what the psychologists would call "relaxed" and as such it would doubtless rate for very high praise. There are a great number of relaxed drivers about, among whom love-making at the wheel has long been regarded as a duplicated form of relaxation. Another nonchalant manifestation of relaxed driving is shaving. Plugging his electric razor into an appropriate fitting in the dashboard, the busy motorist can prepare himself for the next session of courtship. Only the other day a Washington taxi driver, bored with the monotony of negotiating his vehicle through a particularly slow-moving traffic jam, started to shave. While so engaged he was summoned by an officious motor-cycle policeman. The charge against him was dismissed on the rather mysterious condition that he should spend three two-hour periods in a police traffic school. Since his technical ability was never in question, it is rather hard to imagine what is the nature of the instruction which will be inflicted on him. His own view is that he was shaving without due care and attention and that if he had only been using his rear-view driving mirror instead of keeping his eye on the traffic ahead he would have seen the motor-cycle policeman coming up behind him. In that respect he has already learnt his lesson. Reading at the steering wheel by contrast is probably now a relic of the bookish past banished by the effulgent rays of television. In any event, it goes better with the meditative tempo of old-fashioned pedal cycling. I know a lady whose old father had a sort of reading-desk fitted to his handle-bars.

MOTOR MYSTIQUE

Every age has its *mystique* and the *mystique* of our time is the motor-car. It is world-wide. Peasants behind the Iron Curtain, allowed to see "Grapes of Wrath" in order to demonstrate to them the horrors of life in the United States, unexpectedly swallowed the wrong lesson and became enviously aware that even quite poor Americans have motor-cars of sorts, while they themselves have none. When the House of Lords was recently debating the slaughter on our roads Lord Lucas of Chilworth truly remarked: "The ownership of a motor-car, whether we like it or not, is the modern symbol of our economic progress." This economic symbol is the counterpart of the sex symbol currently embodied in Mademoiselle Bardot and represented in thousands of cheap imitations of her. About both there is a *mystique*. A very bright and sophisticated friend of mine from Nigeria, commenting on the observance of the English Sunday as she saw it, remarked recently that it is the day father looks after his mechanical idol, his motor-car, and can invariably be seen worshipping it. By motor-cars over 5,000 people are killed in England every year, and hundreds of thousands injured. Only a species of religious sentiment (and a pretty fanatical religious sentiment at that) could tolerate and connive at it. The ancient Carthaginians were a solid sensible commercial people like us with a great overseas trade and fine fleets and harbours and a city civilisation. The embodiment of their religion, or basic outlook on life, was the god Moloch, who required babies to be regularly roasted in his honour, but I doubt whether they sacrificed as many as 5,000 a year. It is perhaps a little hard for us now to visualise their point of view. It may be equally hard for future generations to visualise ours. It was perhaps most vividly expressed many years ago by the Italian poet Marinetti in his Declaration of Futurism: "The splendour of the world," he said, "has been enriched by a new form of beauty, the beauty of speed . . . A race automobile which seems to rush over exploding powder is more beautiful than the Victory of Samothrace . . . We will sing the praises of man holding the flywheel of which the ideal steering-post traverses the earth impelled itself around the circuit of its own orbit."

UNDERWHELMING PENALTIES

If a fashion evolved for people to carry firearms about with them wherever they went and 5,000 people were fatally shot every year; if a gardening mania set people carrying scythes and sickles all over the streets and 5,000 people were beheaded every year; even if 5,000 people were fatally mauled every year by the Englishman's friend, the dog, a mere rationalist would expect a governing Government and a sensible people to take very effective steps to stay the slaughter. But if they were up against a *mystique* of firearms or gardening or dog-worship it would be easier said than done. Sympathetic juries will not convict, sympathetic magistrates will not inflict retributive penalties. In 1957 only 107 out of over 3,000 motorists convicted in the lower courts of dangerous driving were sent to prison; in the higher courts the figure was 10 out of 131. Nor are the fines inflicted notably heavy. In the debate in the Lords it was pointed out that the average fine for driving under the influence of drink was about 25 per cent. of the maximum and the average fine for dangerous driving was about 15 per cent. of the maximum. The offender is decidedly underwhelmed by his treatment in the courts. One can imagine the howl of indignation that would go up if it were suggested that the principle of the deodand should be revived so that the instrument of offence should be confiscated or destroyed. The *mystique* dominates human life. The ju-ju of the mechanical idol is too powerful.

Richard Roe.

Honours and Appointments

Mr. Lancelot John Heron, solicitor, of Durham, has been appointed Coroner for Gateshead-on-Tyne and North-West Durham in succession to Mr. William Carr, who is retiring after twenty-six years as coroner.

Mr. Arthur Thelwell, assistant solicitor to Birkenhead Corporation since 1956, has been appointed senior assistant solicitor to Rochdale Corporation.

ST. GEORGE'S FLAG TO BE FLOWN

In future the flag of St. George will be flown on Government buildings in England on St. George's Day. Mr. R. A. Butler, Home Secretary, said that The Queen had approved a recommendation "that St. George's Day should be fixed as an additional day for the flying of flags on Government buildings in England, and that on this day the flag of St. George may be flown in addition to the Union Jack."

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Expediting Contracts

Sir,—Having already expressed through the correspondence columns of *The Times* my views on the subject covered by the article in your issue of 14th August under the hand of the distinguished author of Emmet on Title, I hesitate to make any further comments, but I would like to say that clients themselves are often to blame for delay in the preparation of a contract because, in my experience, they do not always notify their solicitor that they have placed their property in the hands of an estate agent for sale. The result is that when the solicitor has been notified by the agent that a sale has been negotiated the hunt for the deeds begins and a great deal of time is often taken up in obtaining them or, quite frequently, an abstract from a mortgagee.

My view is that the majority of clients are quite ignorant of what has to be done in order to produce a binding contract and I feel that probably The Law Society could do something towards publicising the steps which have to be taken.

Arising out of Dr. J. Gilchrist Smith's remarks on the use of the clauses of the Special Conditions of Sale so far as they concern local land charges, I feel there is one matter which could be of vital importance in some cities and towns and which the ordinary search will not reveal. I refer to slum clearance programmes and the duty thrown upon local authorities under s. 1 of the Housing Repairs and Rents Act, 1954. A local land charges search, with the usual settled form of additional enquiries, will not reveal that a local authority has placed a particular property in its programme for consideration as being represented as unfit for human habitation, but an additional enquiry for an additional fee may elicit the information that the property has been included in such a programme and may be dealt with within an indefinite period of years. The point is, of course, that until a demolition or closing order is actually made no entry will appear in the land charges register. Why should not it be possible for such a matter as this to be made registrable? Or, alternatively, could not the settled form of enquiries be amended and agreed to include such a matter?

Most practitioners are aware of really "black" spots in their own localities and exercise caution accordingly, but there may be some districts of which they may be quite unaware that any clearance is contemplated. A solicitor who does not practice in the district is in an even greater difficulty.

VERNON O. D. CADE.

Cambridge.

Sir,—With reference to the letters to *The Times* to which Dr. J. Gilchrist Smith refers in his article entitled as above, it is to be regretted that so far no letter appears to have been written by The Law Society setting out not only the amount but the importance of the work a solicitor does even in a "simple" conveyancing transaction and the responsibility which such work carries. House purchase is not of the type of goods sold in a self-service store.

Furthermore, the letters seem to be out of perspective. What is the position? It is that the vendor puts his property on to the market for sale and receives an offer in such market. He should accordingly be prepared to submit to the conditions of the market. But of course, he does not wish to do so. He has no doubt these days a very good price and all his endeavours and pressure tactics are directed to obtaining a contract signed by the purchaser. The purchaser on the other hand probably looked over the house twice or possibly three times and knows nothing about drains, damp courses, wood worm or dry rot. He is probably still less acquainted with the neighbourhood and knows nothing about town planning schemes, proposed new main roads, proposed nearby airfields or similar possibilities. No doubt he is proposing to take on a substantial financial responsibility. Why should he not be given proper opportunity of ascertaining as much as possible about the property before he commits himself to the purchase and mortgage repayments? He should not be expected to sign a "conditional contract" which will throw upon him the liability for a dispute if something turns up in searches, etc., which he does not like and of which he would prefer to think about before binding himself.

If vendors want quick contracts then they should show a readiness to sell what the purchaser expects and forward with the draft contract not only official certificates of search (as suggested by Mr. Arnold in his letter to *The Times*, 17th August) but also the fullest and clearest answers to the usual preliminary enquiries and a plan of the property.

The purchase of a house is a serious matter. No two cases are identical and it is time that solicitors, instead of being "pushed around," should insist on being allowed to continue to do their work properly and with the object, in accordance with the traditions of the profession, of benefiting and properly protecting their client. Even assuming that the passage of time (it is not "delay") can be reduced, will someone please explain how solicitors are to get and pay the additional staff to do four weeks work in seven days?

One further point—do the advocates of "short cuts" ever have to explain (as they undoubtedly should) all the legal complications to the proposed purchaser and, if so, how quickly can they do it?

M. H. PINHORN.

London, S.W.6.

Company Law Amendment

Sir,—In any further amendment of company law, a matter which requires consideration is the time limit for registration of the requisite particulars of mortgages and charges. The penal consequences of failure to register in time can be serious, and enlargement of time conferred by an order of the Chancery Division does not afford priority over mortgages or charges which may have been registered prior thereto. I suggest that a system of registration of priority notices should be established similar to that obtaining in the case of land charges. There are many cases of delay in registration of the requisite particulars due to causes outside the control of solicitors.

A. W. BAYLEY.

Hove, Sussex.

Desire Down Below?

Sir,—After dictating the will of a lady client, I was surprised to read in the draft "I direct that my body shall be remated". The grave's a fine and private place, but none (I think) do there embrace.

RICHARD A. HOLLAND.

Arundel,
Sussex.

Obituary

Sir JOHN EDMUND DAW, registrar of Exeter, Newton Abbot and Torquay County Courts from 1902 to 1927 and Chairman of Devon County Council from 1937 to 1946, died recently at the age of 92. He was admitted in 1887.

Mr. FRANK LLOYD HARRIS, solicitor, Assistant Registrar, H.M. Land Registry, died on 27th July.

Mr. JOHN JAMES REED, solicitor, of Penrith, Cumberland, died on 18th August. He was admitted in 1903.

In The Law Society's Intermediate Examination, Trust Accounts and Book-keeping Portion, held on 25th and 26th June, 1959, 238 of the 424 candidates passed, six of them with distinction. The Council have awarded the Herbert Ruse Prize to Victor William Charles Hall and Lewis Llewelyn Lewis, LL.B., jointly. In the Final Examination held on 15th, 16th, 17th and 18th June, 347 of the 505 candidates passed. The Council have awarded the Edmund Thomas Child Prize to John Malcolm Cunliffe, LL.B., Sheffield, and the John Mackrell Prize to Edward Vere Bygott, B.A., Oxon.

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Baking Industry Exemption Order, 1959. (S.I. 1959 No. 1398.) 4d.

County Court Districts (Long Eaton and Parish of Lymm) Order, 1959. (S.I. 1959 No. 1423.) 4d.

County Court Districts (Wells) Order, 1959. (S.I. 1959 No. 1424.) 4d.

Dolgelley–Bala–Ruthin–Queensferry–South of Birkenhead Trunk Road (Queensferry By-pass) Order, 1959. (S.I 1959 No. 1395.) 6d.

Fire Services Act, 1959 (Commencement No. 1) Order, 1959. (S.I. 1959 No. 1401.) 4d.

Housing (Prescribed Forms) (Amendment) Regulations, 1959. (S.I. 1959 No. 1400.) 6d.

These Regulations amend the Housing (Prescribed Forms) Regulations, 1957, by making certain alterations in the notes on compensation appended to forms concerned with the compulsory demolition, closing and acquisition of unfit houses, and by substituting two new forms for the forms prescribed for the purpose of declaring that a house which is to be compulsorily purchased is unfit for human habitation. The main amendments are consequential on the provisions of the Town and Country Planning Act, 1959, in particular the provisions contained in Part I of the Second Schedule to that Act (to which reference is made on p. 571, *ante*).

Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations, 1959. (S.I. 1959 No. 1431.) 5d.

Opencast Coal (Requisitioned Woodlands) Regulations, 1959. (S.I. 1959 No. 1427.) 6d.

Smallholdings (Contributions towards Losses) (Amendment) Regulations, 1959. (S.I. 1959 No. 1426.) 5d.

Stoke-on-Trent–Middlewich–Delamere Trunk Road (Lawton Gate Link Road) Order, 1959. (S.I. 1959 No. 1409.) 4d.

Stopping up of Highways Orders:—

(County Borough of Bradford) (No. 5). (S.I. 1959 No. 1385.) 5d.

(County Borough of Bradford) (No. 6). (S.I. 1959 No. 1403.) 5d.

(County of Buckingham) (No. 9). (S.I. 1959 No. 1379.) 5d.

(County of Chester) (No. 14). (S.I. 1959 No. 1417.) 5d.

(County of Chester) (No. 16). (S.I. 1959 No. 1381.) 5d.

(County of Chester) (No. 17). (S.I. 1959 No. 1411.) 5d.

(City and County Borough of Coventry) (No. 8). (S.I. 1959 No. 1412.) 5d.

(County of Cumberland) (No. 1). (S.I. 1959 No. 1418.) 5d.

(County of Dorset) (No. 3). (S.I. 1959 No. 1413.) 5d.

(County of Kent) (No. 16). (S.I. 1959 No. 1382.) 5d.

(County of Lancaster) (No. 14). (S.I. 1959 No. 1393.) 5d.

(County of Lancaster) (No. 16). (S.I. 1959 No. 1380.) 5d.

(County of Lancaster) (No. 17). (S.I. 1959 No. 1404.) 5d.

(County of Lancaster) (No. 18). (S.I. 1959 No. 1414.) 5d.

(London) (No. 34). (S.I. 1959 No. 1383.) 5d.

(County of Merioneth) (No. 1). (S.I. 1959 No. 1402.) 5d.

(Norfolk) (No. 2) 1954 (Variation). (S.I. 1959 No. 1405.) 5d.

(County of Northumberland) (No. 4). (S.I. 1959 No. 1392.) 5d.

(City and County Borough of Nottingham) (No. 1). (S.I. 1959 No. 1384.) 5d.

(County of Oxford) (No. 5). (S.I. 1959 No. 1415.) 5d.

(City and County Borough of Plymouth) (No. 4). (S.I. 1959 No. 1420.) 5d.

(County of Salop) (No. 4). (S.I. 1959 No. 1406.) 5d.

(County Borough of Southampton) (No. 2). (S.I. 1959 No. 1407.) 5d.

(County of Stafford) (No. 10). (S.I. 1959 No. 1397.) 5d.

(County of Sussex, East) (No. 4). (S.I. 1959 No. 1394.) 5d.

(Wiltshire) (No. 8) 1951 (Variation). (S.I. 1959 No. 1386.) 4d.

(County of Wilts) (No. 8). (S.I. 1959 No. 1408.) 5d.

Town and Country Planning (General Development) (Scotland) Order, 1959. (S.I. 1959 No. 1361.) 7d.

Town and Country Planning (Limit of Annual Value) (Scotland) Order, 1959. (S.I. 1959 No. 1362.) 4d.

Town and Country Planning (Prescribed Forms of Notices) (Scotland) Regulations, 1959. (S.I. 1959 No. 1363.) 8d.

Weston-super-Mare (Water Charges) Order, 1959. (S.I. 1959 No. 1360.) 5d.

SELECTED APPOINTED DAYS

August

15th Road Traffic Act, 1956, s. 1.

16th Housing (Prescribed Forms) (Amendment) Regulations, 1959. (S.I. 1959 No. 1400.)
Street Offences Act, 1959.
Town and Country Planning Act, 1959.
Town and Country Planning General Development Order, 1959. (S.I. 1959 No. 1286.)
Town and Country Planning (Limit of Annual Value) Order, 1959. (S.I. 1959 No. 1318.)
Town and Country Planning (Prescribed Forms of Notices) Regulations, 1959. (S.I. 1959 No. 1287.)

29th Landlord and Tenant (Furniture and Fittings) Act, 1959.
Obscene Publications Act, 1959.

September

1st County Court Districts (Wells) Order, 1959. (S.I. 1959 No. 1424.)
Opticians Act, 1958, ss. 2, 3 (except subs. (3)), 4 and 7 (2).

7th Legal Aid (Assessment of Resources) Amendment Regulations, 1959. (S.I. 1959 No. 1350.)
National Assistance (Determination of Need) Amendment Regulations, 1959. (S.I. 1959 No. 1241.)
National Assistance (Disregard of Assets) Order, 1959. (S.I. 1959 No. 1244.)

"THE SOLICITORS' JOURNAL," 27th AUGUST, 1859

On the 27th August, 1859, The Solicitors' Journal commented on the great Smethurst poisoning case: "No sooner has a capital sentence been pronounced . . . than an agitation springs up for a remission of the legal penalty. The Home Secretary is beset with memorials and deputations and the newspapers are flooded with correspondence to prove that the judge was partial, the jury mistaken, or the witnesses biased or ignorant. Much of this is owing to the natural efforts of the poisoner's friends and relatives; something to the shrinking of the civilised mind from the terrible and irreversible punishment which the law assigns to murder; not a little to the wounded self-opinion of the witnesses for the defence, unwilling to acquiesce in a verdict which pronounces them in the wrong; but after all these deductions there generally remains a certain amount of reflective and reasonable doubt more or less justified by the circumstances of the case, which it is the responsible duty of the administrators of the law to receive with respect and to weigh with impartiality and coolness . . . The Smethurst trial has been naturally productive of comment and agitation . . . The mysterious horror always attaching to a 'poisoning case' has been heightened by the social position of the convict and the victim, the protracted nature of the proceedings and . . . by the admitted imperfections of the evidence; nor can it be denied that the kind of scientific testimony which has grown up in connection with prosecutions for poisoning is viewed in many quarters with some suspicion . . . Young pert lecturers from self-constituted schools of medicine, writers of 'specialty' volumes much better known to the publishers than to the medical public, outrageous adventurers who will seize any opportunity to place their names in the novel notoriety of a newspaper column, throng on these occasions often unsolicited into the office of the prisoner's attorney and propound from the witness-box theories unheard of before and probably consigned to oblivion (very wisely) thereafter. The evidence of such men is rated at its proper price by the scientific world, but . . . it is puzzling to distinguish between the real medical philosopher and the pushing impostor."

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

ARBITRATION: JURISDICTION OF UMPIRE TO DISREGARD ADMISSION OF LIABILITY BASED ON INCORRECT LAW: PROCEEDINGS CONTRARY TO NATURAL JUSTICE WHERE PARTIES TAKEN BY SURPRISE BY UMPIRE'S CONDUCT

Société Franco-Tunisienne d'Armement-Tunis *v.* Government of Ceylon

Morris, L.J., and Pilcher, J. 29th May, 1959

Interlocutory appeal from McNair, J., on a motion to set aside or remit award of an umpire.

Disputes under a charterparty relating, *inter alia*, to demurrage at Colombo were referred by the parties, shipowners and charterers, to arbitrators. The charterers admitted liability for demurrage of £829 while the owners claimed £1,878. The charterers' admission was based on an entry in their original time sheet that time started to run at 2 p.m. on 18th October, 1956, that being their application to the facts of the case of the provisions of a clause in the charterparty which provided: "Time lost in waiting for berth to count as discharging time." The arbitrators were unable to agree and an umpire was appointed. The arbitrators appeared before him, presented arguments and left with him written statements of their respective cases. Each case proceeded, so far as related to the demurrage dispute, on the basis that time began to run at 2 p.m. on 18th October, and the charterers admitted on their overall claims that they owed the owners a sum of money, which included the admitted £829. The umpire made his award, which awarded the charterers a sum of money. Explanatory notes, attached to but specifically stated not to be part of the award, showed that he had not only disallowed the whole of the owners' claim of £1,878, disregarding the charterers' admission as to £829, but had in addition awarded the charterers a sum for dispatch money which they had not at any time claimed. The umpire gave as his reason for that award his view, based on his construction of the charterparty as applied to the facts of the case, that time did not start to run against the charterers until 29th October. The owners, dismayed by that award, moved the court to have it set aside or remitted on the grounds that the umpire had (1) exceeded his jurisdiction in including in his award matters not in dispute between the parties, and (2) misconducted himself in awarding the charterers sums which they had admitted as due to the owners, which were not in issue between the parties, and in relation to which the owners had had no opportunity of making submissions to him. The motion was supported by affidavits of the owners' arbitrator which showed a conflict of recollection with an affidavit voluntarily sworn by the umpire as to what had taken place at the hearing. The charterers' arbitrator did not swear an affidavit owing to faulty recollection. The owners' arbitrator said, in effect, that the arbitration had proceeded on the basis of the charterers' admissions, and that he had had no opportunity nor reason to make any submission in respect of the legal and factual position which would have been material if those admissions had not been made. The umpire stated that he had understood that he was to be at liberty to make an award of any amount (whether by way of demurrage or of dispatch) which he might find to be due from one party to the other as a result of the computation which he himself found to be correct on the true construction of the charterparty.

MORRIS, L.J., said that the court could only look at the documents other than the award because of the nature of the application now the subject of the appeal. On excess of jurisdiction, it was quite clear that there never had been a claim for dispatch money and accordingly the umpire had exceeded his jurisdiction when he awarded dispatch money; and the trial judge had rightly remitted the matter to the umpire with a direction to exclude the amount allowed by way of dispatch money. On the issue whether there was excess of jurisdiction in depriving the owners of any right to receive demurrage, the issue before the umpire was: Were the owners entitled to £1,878 by way of demurrage? Once that claim was before the umpire, he was not, in his lordship's view, precluded from deciding what was the correct legal approach. If it was a possible view in law as applied to the facts of this case that no demurrage became due to the owners, then the umpire ought not to be precluded from saying so. The admission of the charterers as to time beginning to count from 2 p.m. on 18th October was an admission based on a view as to the law as applied to certain facts, and the umpire was not forbidden from giving expression to it and deciding what he believed to be correct in law merely by reason of what the charterers had admitted. On this matter there was no excess of jurisdiction. On the second question, however, as to whether the proceedings were unsatisfactory, there was an unfortunate conflict between the recollection of two gentlemen, both experienced and trusted and accustomed to dealing with topics of this kind. On the affidavits before the court it seemed to his lordship that the point which occurred to the umpire was one which would bring about a dramatic development of the case, and he was satisfied that the import of it was not communicated to the arbitrators in such a way as enabled them to deal with it. The umpire could not have made clear that he was proposing not to accept the starting time which both parties had accepted. Whether he was right in law was not for his lordship to say in the present proceedings. But the owners ought to have had a real opportunity of dealing with the new point. The award should be remitted both on dispatch money and also for reconsideration of the issue as to demurrage at Colombo.

PILCHER, J., concurring, said that the dispute as to when time began to run could only be determined by considering the terms of the charterparty on their true construction, and that was a matter of law. It was impossible in a case of this kind to fetter the umpire in considering the true construction of the charterparty and say that, having had the question of demurrage submitted to him, he was bound to adopt a view of the law which he thought was erroneous. But on the second question his lordship thought that there had been before the umpire such a radical change in the position that it should have been made perfectly clear to both arbitrators. The hearing was unsatisfactory and the court was justified in saying that the case should be remitted, though it was in his lordship's view undesirable that there should be a direction by the court to the umpire to state his award in the form of a special case. That should be done, if at all, at the request of the parties.

APPEARANCES: *Michael Kerr* and *M. J. Mustill* (*Holman, Fenwick & Willan*); *Ralph Millner* (*T. L. Wilson & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law]

WILL: REMUNERATION OF ATTESTING TRUSTEE SOLICITOR

***In re* Royce's Will Trusts; Tildesley *v.* Tildesley and Others**

Lord Evershed, M.R., Hodson and Romer, L.JJ.
14th July, 1959

Appeal from Wynn Parry, J. ([1959] Ch. 191; 102 SOL. J. 859).

A testator by cl. 16 of his will provided that, "if and so long as my trustees are retaining any part of the trust fund [his residuary estate] and receiving and applying the income," they were entitled to pay themselves 5 per cent. of the income thereof "to be equally divided between them by way of remuneration for their services . . ." By cl. 17 he provided that "any person who may for the time being be an executor or a trustee of my will and who may be a solicitor shall be entitled to charge and shall be paid out of my estate for his services in the same manner as though not being an executor or trustee he had been employed by my executors or trustees to render such services . . ." One of the two trustees died after proving the will, and the surviving trustee appointed a solicitor, who had attested the will, to be a trustee in place of the trustee who had died.

LORD EVERSHED, M.R., said that the question was whether the solicitor was disqualified under s. 15 of the Wills Act, 1837, from claiming a benefit under either or both cl. 16 or cl. 17 of the will. That posed the question whether, at the time of the

attestation, any beneficial interest was given to the attesting witness under the instrument the execution of which he was going to attest. If, as was submitted, the relevant words of s. 15 ought to be read as equivalent to "If any person shall attest the execution of a will who or whose husband or wife shall thereafter take any benefit," it was difficult to see how you could limit the wife or the husband, as the case might be, to an individual who happened to be the wife or the husband at the time the will was attested. If an interest subsequently taken as a result of a later appointment was sufficient to disqualify a trustee from his remuneration, then subsequent marriage to an attesting witness would equally be a disqualification, since, at the time when the wife or husband took, she or he had acquired the character of being wife or husband of an attesting witness. In his lordship's view it could not be said that the solicitor as an attesting witness was one at any relevant date to whom any beneficial interest was given by the will which he attested, and therefore he was not excluded by s. 15 from taking benefits under cll. 16 and 17 of the will if he was otherwise on their true construction entitled to them. The services referred to in the clauses were not the same. Clause 16 related to the general services of trustees as trustees—whether lay or professional: cl. 17 related to professional services rendered by a solicitor in the course of his professional work. Therefore the clauses should be construed as giving the solicitor the right to enjoy the benefits under both.

HODSON, L.J., agreed.

ROMER, L.J., delivered a concurring judgment. Appeal allowed.

APPEARANCES: *Sir Lynn Ungoed-Thomas*, Q.C., and *R. H. Walton* (*Callingham, Griffith & Bate*); *H. E. Francis* (*Jaques & Co.*, for *Ollard, Ollard & Sessions*, Wisbech); *E. I. Goulding* (*Jaques & Co*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 254

ESTATE DUTY: VALUATION OF SHARES: CONTROL OF COMPANY

Barclays Bank, Ltd. *v.* Inland Revenue Commissioners

Lord Evershed, M.R., Romer and Pearce, L.JJ.

21st July, 1959

Appeal from Danckwerts, J. ([1959] Ch. 341; 103 SOL. J. 76).

At the date of his death on 15th December, 1955, the deceased owned beneficially 1,100 shares in a company. By a settlement made on 1st December, 1936, he had settled 3,650 shares in the same company upon trust for his wife and children, he himself taking no benefit. The deceased had always been a trustee of the settlement; his name appeared as the first of the four trustees' names in the company register, and since Table A of the Companies (Consolidation) Act, 1908, had been incorporated in the company's articles of association, it was he who exercised the powers of voting. The issued share capital of the company had always been 8,350 shares, so that the 3,650 settled shares and the 1,100 shares held beneficially together amounted to more than half the issued share capital. The trustees took out a summons to determine whether the deceased had control of the company within the meaning of s. 55 of the Finance Act, 1940, in which event the 1,100 shares should be valued for estate duty by reference to their assets value in accordance with s. 55 (2), or whether they should be valued by reference to their market value under s. 7 (5) of the Finance Act, 1894. Danckwerts, J., held that the deceased did not have control of the company within the meaning of s. 55 of the Finance Act, 1940, and his shares should be valued under s. 7 (5) of the Finance Act, 1894. The Commissioners of Inland Revenue appealed.

LORD EVERSHED, M.R., said that the difficulty in s. 55 (3) (*a*) was caused by the words "powers of." What was really meant by the phrase "control of the powers of voting" was surely not more than "the control of voting." The words were intended and were apt to cover the person who could, either by the direct exercise of the voting power or rights that he had or indirectly by requiring such power or rights to be exercised as he wanted by others, command or produce the result that the majority of the votes would be given as he wished. It covered the absolute owner of 51 per cent. of the (voting) shares, and also the beneficial owner of 51 per cent. registered in the name of a nominee. The section therefore applied *prima facie*, and subject to exclusion under subs. (5), to a person who was during the relevant period in a position, by virtue of the voting rights vested in him, to secure the passing of any ordinary resolution at a general meeting. The next question was whether the *prima facie* result altered if it was shown that a relevant number of the shares, whose votes he was able and entitled to cast, were registered in him jointly with others as a trustee or otherwise. The authorities laid down as a clear general proposition of law that control of a limited liability company depended on, and was to be judged by reference to, the company's own constitution. The court ought, in conformity with the principles of law binding on it, to hold that the Crown had discharged the onus on it of showing that the deceased, during the relevant period, was (by virtue of the 3,650 shares registered in the names of himself and his three co-trustees—his own name being first on the register—and of the 1,100 shares of which he was the registered proprietor and beneficial owner) "in control of the company" within the meaning of s. 55 (1) and (3) of the Act. The appeal should be allowed.

ROMER, L.J., agreeing that the appeal should be allowed, said that if a case was found to come within s. 55 (1) it was unnecessary to look further and, in particular, it was irrelevant to inquire whether the case fell within the terms of subs. (3). In other words, the "deeming" provisions of subs. (3) were supplementary to, or expansive of, subs. (1), and were not merely expository thereof.

PEARCE, L.J., agreed that the appeal should be allowed. Appeal allowed.

APPEARANCES: *John Pennycuick*, Q.C., and *E. Blanshard Stamp* (*Solicitor, Inland Revenue*); *B. L. Bathurst*, Q.C., and *Denys Buckley* (*Gibson & Weldon* for *J. & A. Bright*, Nottingham).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 240

Chancery Division

COMBINATION OF CHARITABLE FUNDS: ENLARGEMENT OF SCOPE OF PERMISSIBLE INVESTMENTS: INTERIM ORDER "UNLESS AND UNTIL" LAW AMENDED

In re Royal Naval and Royal Marine Children's Homes, Portsmouth; Lloyds Bank, Ltd., and Others *v.* A.-G.

Roxburgh, J. 4th June, 1959

Adjourned summons.

The custodian and the managing trustees of the general fund of the Royal Naval and Royal Marine Children's Homes, Portsmouth, "the institute," applied to the court under the Charitable Trusts Acts, 1853 to 1939, for permission (*a*) to consolidate the general fund of the institute and the investments and moneys representing the capital of the Royal Commissioners Patriotic Fund, of which the institute was the trustee, into one pool in which the several trusts were to be deemed to be interested in appropriate aliquot shares, and (*b*) to enlarge the scope of permissible investments for such combined fund.

ROXBURGH, J., said that he had long regarded as unsatisfactory the position under which judges were expected to exercise their discretion in relation to a matter which was primarily financial and economic. Therefore it was with something little short of ecstasy that he had read recently [H.L. Debates, vol. 216, col. 410 (13th May, 1959); *The Times*, 14th May, 1959] that an Act for amending the general range of authorised investments was in contemplation. He had reached the conclusion, which counsel for the Attorney-General did not oppose, that any further orders in these matters should be interim orders, that was, to take effect unless and until the law regulating the investment of trust moneys generally was amended by Parliament. It was better that there should be a general range of permitted investments for charitable funds than that each charity should have its own particular private range: there came a point at which the exercise of judicial discretion by several different judges on a matter which arose almost daily might become very embarrassing to the legal profession and it was for that reason that he adopted the present scheme, which was substantially the same as that adopted by Vaisey, J., in *In re Royal Society's Charitable Trusts* [1956] Ch. 87. His lordship was anxious to bring about some uniformity of practice; he was trying to mould his discretion

in that direction and that was the policy he hoped to adopt until Parliament made its will known. Order consolidating the funds and enlarging the scope of permissible investments accordingly.

APPEARANCES: *James Gibson* (*Mills & Morley*, for *Bramsdon & Childs*, Portsmouth); *Denys Buckley* (*Treasury Solicitor*).

[Reported by Miss J. F. LAMB, Barrister-at-Law]

LANDLORD AND TENANT ACT, 1954: DISCOVERY: CROSS-APPLICATIONS AS TO FINANCIAL POSITION

In re St. Martin's Theatre; Bright Enterprises, Ltd. v. Willoughby de Broke

Danckwerts, J. 7th July, 1959

Procedure summonses.

An application under the Landlord and Tenant Act, 1954, by tenants of a theatre for the grant of a new tenancy was opposed by the landlord, one of the grounds of the opposition being that the landlord himself intended to conduct a theatrical business on the property. The evidence was that the dilapidations under the lease amounted to some £16,000.

On cross-applications for discovery the tenants asked for discovery and inspection of the landlord's income tax returns and pass sheets over the past three years, on the ground that they were relevant to the question whether the landlord could carry on a theatrical business himself. The landlord asked for discovery and inspection of the tenants' balance sheets and profit and loss account during the period of the tenancy.

DANCKWERTS, J., said the documents for which the landlord asked were relevant and of considerable importance on the question of the grant of a new lease to the tenants. Where a tenant was asking for a lease of property his financial situation was always of the greatest materiality to the landlord and the tenants should disclose these documents.

He had considerable doubt whether the documents for which the tenants asked had any relevance to the question for decision on this summons, but even if they had the request was grossly oppressive. The past income tax returns and pass sheets of the landlord did not have much to do with his future ability to carry on a business on his own property. Their request had no real bearing on the issues on the originating summons under the Act and ought not therefore to be allowed in the discretion of the court.

APPEARANCES: *G. N. Eyre* (*Bartlett & Gluckstein*); *Norman Tapp* (*Boodle, Hatfield & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

ORDER FOR SPEEDY TRIAL OF ACTION IN CHANCERY DIVISION DURING LONG VACATION: POWER BY IMPLICATION UNDER R.S.C., ORD. 63, r. 4, ON APPLICATION FOR DIRECTIONS UNDER R.S.C., ORD. 14, r. 8

Seth-Smith *v.* Trustee in Bankruptcy for Davies and Another

Phillimore, J. 5th August, 1959

Application to fix date for hearing of Chancery action in vacation.

In an action by a landlord for forfeiture of a lease of property on the ground of breach of covenant to repair, the trustee in bankruptcy for one of the defendants submitted to judgment under R.S.C., Ord. 14, but counter-claimed for relief against forfeiture, which was refused by the master. He then applied to a judge of the Chancery Division on a motion for stay of execution on the landlord's claim. On that motion the landlord asked for directions for the trial of the counter-claim under R.S.C., Ord. 14, r. 8, which provides that " Where leave . . . is given to . . . enter final judgment subject to a suspension of execution pending the trial of a counter-claim, the court or judge shall give directions as to the further conduct of the action . . . "; and he submitted that the matter of the counter-claim was proper to be set down for trial in a special list of actions during the long vacation under the provisions of R.S.C., Ord. 63, r. 4, which provides: " (2) Any party to any cause or mattter in the Queen's Bench Division may . . . before the close of the long vacation . . . apply by summons to one of the vacation judges . . . for the trial or hearing of any such cause or matter during the long vacation, and such judge may make an order for the trial or hearing of such cause or matter during the long vacation accordingly and fix the date of the trial: Provided that no such order shall be made (*a*) unless the judge is satisfied that there is urgent need for the trial or hearing . . . during the said long vacation; . . . " and " (3) The court or a judge dealing with an application under Ord. 14, r. 8, may, if satisfied that there is urgent need for the trial of the action during the long vacation, order that the trial shall take place in the long vacation and thereupon the action shall be set down for trial in a special list of actions to be tried during the long vacation: . . . " Counsel then submitted that though Ord. 63, r. 4, made no special provision for the hearing of actions in the Chancery Division during the long vacation but referred only to causes or matters " in the Queen's Bench Division," the procedure under Ord. 14 applied to all divisions of the High Court and accordingly an action in the Chancery Division could be the subject of trial in the long vacation. Danckwerts, J., on undertakings by the parties to take all the necessary steps to have the action on the counter-claim brought on, intimated that the matter was proper for trial in the vacation court. Counsel for the trustee in bankruptcy asked the vacation judge (Phillimore, J.) to fix 19th August for the trial of the counter-claim, which was now the only substantial issue remaining. The hearing would take about half a day. The condition of the property was such that every week lost increased the mischief. Efforts to dispose of it, which would be for the benefit of both parties, had so far been unsuccessful owing to the state of disrepair. The approbation of Danckwerts, J., for the present application for trial in the vacation court was relied on. Counsel for the landlord said that the non-repair alleged in their statement of claim had been admitted. Every week lost produced a deterioration of some hundreds of pounds in value, since the property was infected by both wet and dry rot. The only difficulty arising was that the provisions of R.S.C., Ord. 63, r. 4, as to the hearing of actions in the vacation court, referred only to the Queen's Bench Division, and though Ord. 14 proceedings were applicable equally to the Chancery and to the Queen's Bench Division, no one could find any trace of a " special list " for Chancery actions during the vacation; but in view of the recommendation of Danckwerts, J., he supported the present application for trial in the vacation court.

PHILLIMORE, J., said that the action would be set down in a special list for the vacation court dealing with matters in the Chancery Division on 19th August, and would be heard after other vacation matters in that court had been disposed of.

APPEARANCES: *Gerald Godfrey* (*Joelson & Co.*); *I. Edwards-Jones* (*Hextall and Mudford*).

[Reported by Miss M. M. HILL, Barrister-at-Law]

Queen's Bench Division

ROAD TRAFFIC: SPEED LIMIT EXCEEDED BY POLICEMAN: ACCIDENT: CIVIL LIABILITY

Gaynor *v.* Allen

McNair, J. 27th May, 1959

Action.

At about 7.20 p.m., some twenty minutes after lighting-up time, the plaintiff, while crossing a road subject to a 40-mile an hour speed limit, was knocked down by a police motor-cyclist driving at sixty miles an hour in the course of his duties. The policeman was killed and the plaintiff claimed damages for personal injuries against his administratrix, alleging negligence. In view of s. 3 of the Road Traffic Act, 1934, the policeman was exempted from observing the speed limit and it was submitted on behalf of the defendant that no conclusion could be drawn from the fact that he was driving at sixty miles an hour, and therefore he was not negligent.

MCNAIR, J., said that s. 3 dealt only with criminal liability and the case raised the question whether that affected the driver's civil liability. In his lordship's judgment the police motor-cyclist had to be judged, as regards civil liability, in exactly the same way as any other driver of a motor-cycle in similar circumstances. He, like any other driver, owed a duty to the public to drive with due care and attention and without exposing members of the public to unnecessary danger. The question was: Was

it clear that the police motor-cyclist, judged by the standard of an ordinary driver of a motor vehicle on his private occasions, was to be held guilty of negligence causing the accident? The answer to that was clearly "Yes." To drive at that speed on a restricted road, in the half-light at a time of the evening when it was known that there might be pedestrians making their way home was itself to drive at an improper speed. His lordship found that the plaintiff was to some extent to blame and held that the plaintiff should bear one-third of the responsibility and the defendant two-thirds.

APPEARANCES: *Michael Sherrard* (*D. J. Freeman & Fraser*); *Patrick O'Connor* (*Ponsford & Devenish, Tivendale & Munday*).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] [3 W.L.R. 221

Probate, Divorce and Admiralty Division

DIVORCE: PRACTICE: ENFORCEMENT OF ORDER FOR COSTS: SEQUESTRATION OF MONEYS IN DEBTOR'S ACCOUNT AT BANK

Guerrine (otherwise Roberts) *v.* Guerrine

Marshall, J. 13th May, 1959

Motion.

After a wife had been granted a decree *nisi* of nullity with an order for costs against the husband the costs were taxed but no payments in discharge of the debt due under the order were made. A writ of sequestration having been issued, Barclays Bank, Ltd., declined to pay funds standing to the husband's credit at the bank to the sequestrators without further order of the court. The wife issued a notice of motion seeking an order that the bank should verify and admit the balance standing to the credit of the husband at the bank and should pay the sum into court to the credit of the sequestration account. The notice of motion was served on the husband's solicitors and on the bank. Counsel for the wife submitted that moneys standing to a debtor's credit at a bank were liable to sequestration and a bank account was a chose in action of which no part could be paid away by the bank without an order of the court (see R.S.C., Ord. 43, r. 6, and *Miller* v. *Huddlestone* (1882), 22 Ch. D. 233). Counsel for the bank admitted the extent of the credit balance standing to the account of the husband. The husband did not appear and was not represented.

MARSHALL, J., said that there would be an order that Barclays Bank, Ltd., having admitted the sum standing to the credit of the husband in their books, should pay that sum into court to the credit of the sequestration account. The order would provide for the costs of the sequestrators of and incidental to the sequestration to be taxed by the taxing master and that he should fix their remuneration and tax the costs of the bank and that the amount so taxed and found due should be paid out of the fund paid into court. Order accordingly.

APPEARANCES: *John Mortimer* (*T. D. Jones & Co.*); *R. B. Willis* (*Durrant Cooper & Hambling*).

[Reported by Miss ELAINE JONES, Barrister-at-Law] [1 W.L.R. 760

WEEKLY LAW REPORTS: REFERENCES

The following page numbers can now be given in respect of notes of cases published in these columns on the dates indicated:—

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10th July, 1959:—

National Coal Board's Application, *In re* .. .. 3 W.L.R. 152

17th July, 1959:—

Chappell & Co., Ltd., and Another *v.* Nestlé Co., Ltd., and Another .. 3 W.L.R. 168

Maxine Footwear Co., Ltd. *v.* Canadian Government Merchant Marine, Ltd. 3 W.L.R. 232

Sze Hai Tong Bank, Ltd. *v.* Rambler Cycle Co., Ltd. .. .. .. 3 W.L.R. 214

24th July, 1959:—

Cavanagh and Ulster Weaving Co., Ltd., *In re* .. .. 3 W.L.R. 262

NOTES AND NEWS

HOUSE PURCHASE AND HOUSING ACT, 1959

The following building societies have been designated for the purposes of s. 1 of the House Purchase and Housing Act, 1959: Bromley Building Society, the Newbury Building Society, the Stoke on Trent Permanent Building Society.

The most recent list of building societies previously so designated was published at p. 640, *ante*.

Personal Note

Mr. JOHN WALLIS RENNEY, assistant solicitor to Durham County Council, was married to Miss Margaret Winifred Lonsdale on 8th August.

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